

required to recognize only a proportionate amount of the gain subject to the gain recognition agreement that would otherwise be required to be recognized on a subsequent disposition of the transferred property under the rules of paragraph (b)(2) of this section. The proportion required to be recognized shall be determined by reference to the percentage of stock (by value) of the transferee foreign corporation received in the initial transfer that is retained by the United States transferor.

(ii) The rule of this paragraph (h) is illustrated by the following example:

Example. A, a United States citizen, owns 100 percent of the outstanding stock of foreign corporation X. In a transaction described in section 351, A exchanges his stock in X (and other assets) for 100 percent of the outstanding voting and nonvoting stock of foreign corporation Y. A submits an agreement under the rules of this section to recognize gain upon a later disposition. In the following year, A disposes of 60 percent of the fair market value of the stock of Y, thus terminating 60 percent of the gain recognition agreement. One year thereafter, Y disposes of 50 percent of the fair market value of the stock of X. A is required to include in his income in the year of the later disposition 20 percent (40 percent interest in Y multiplied by a 50 percent disposition of X) of the gain that A realized but did not recognize on his initial transfer of X stock to Y.

(2) *Certain dispositions by a domestic transferred corporation of substantially all of its assets.* If the transferred corporation is a domestic corporation and the U.S. transferor and the transferred corporation filed a consolidated Federal income tax return at the time of the transfer, the gain recognition agreement shall terminate and cease to have effect if, during the term of such agreement, the transferred corporation disposes of substantially all of its assets in a transaction in which all realized gain is recognized currently. If an indirect stock transfer necessitated the filing of the gain recognition agreement, such agreement shall terminate if, immediately prior to the indirect transfer, the U.S. transferor and the acquired corporation filed a consolidated return (or, in the case of a section 368(a)(1)(A) and (a)(2)(E) reorganization described in § 1.367(a)-3(d)(1)(ii), the U.S. transferor and the acquiring corporation filed a consoli-

dated return) and the transferred corporation disposes of substantially all of its assets (taking into account § 1.367(a)-3(d)(2)(v)) in a transaction in which all realized gain is recognized currently.

(3) *Distribution by transferee foreign corporation of stock of transferred corporation that qualifies under section 355 or section 337.* If, during the term of the gain recognition agreement, the transferee foreign corporation distributes to the U.S. transferor, in a transaction that qualifies under section 355, or in a liquidating distribution that qualifies under sections 332 and 337, the stock that initially necessitated the filing of the gain recognition agreement (and any additional stock received after the initial transfer), the gain recognition agreement shall terminate and have no further effect, provided that immediately after the section 355 distribution or section 332 liquidation, the U.S. transferor's basis in the transferred stock is less than or equal to the basis that it had in the transferred stock immediately prior to the initial transfer that necessitated the GRA.

(i) *Effective date.* The rules of this section shall apply to transfers that occur on or after July 20, 1998. For matters covered in this section for periods before July 20, 1998, the corresponding rules of § 1.367(a)-3T(g) (see 26 CFR part 1, revised April 1, 1998) and Notice 87-85 ((1987-2 C.B. 395); see § 601.601(d)(2)(ii) of this chapter) apply. In addition, if a U.S. transferor entered into a gain recognition agreement for transfers prior to July 20, 1998, then the rules of § 1.367(a)-3T(g) (see 26 CFR part 1, revised April 1, 1998) shall continue to apply in lieu of this section in the event of any direct or indirect non-recognition transfer of the same property. See, also, § 1.367(a)-3(f).

[T.D. 8770, 63 FR 33562, June 19, 1998]

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[T.D. 8862, 65 FR 3596, Jan. 24, 2000; 65 FR 66501, Nov. 6, 2000, as amended by T.D. 8937, 66 FR 2257, Jan. 11, 2001]

§ 1.367(b)-1 **Other transfers.**

(a) *Scope.* The regulations promulgated under section 367(b) (the section 367(b) regulations) set forth rules regarding the proper inclusions and adjustments that must be made as a result of an exchange described in section 367(b) (a section 367(b) exchange). A section 367(b) exchange is any exchange described in section 332, 351, 354, 355, 356 or 361, with respect to which the status of a foreign corporation as a corpora-

tion is relevant for determining the extent to which income shall be recognized or for determining the effect of the transaction on earnings and profits, basis of stock or securities, basis of assets, or other relevant tax attributes. Notwithstanding the preceding sentence, a section 367(b) exchange does not include a transfer to the extent the foreign corporation fails to be treated as a corporation by reason of section 367(a)(1). See § 1.367(a)-3(b)(2)(ii) for an illustration of the interaction of section 367(a) and (b).

(b) *General rules*—(1) *Rules.* The following general rules apply under the section 367(b) regulations—

(i) A foreign corporation in a section 367(b) exchange is considered to be a corporation and, as a result, all of the related provisions (*e.g.*, section 381) shall apply, except to the extent provided in the section 367(b) regulations; and

(ii) Nothing in the section 367(b) regulations shall permit—

(A) The nonrecognition of income that would otherwise be required to be recognized under another provision of the Internal Revenue Code or the regulations thereunder; or

(B) The recognition of a loss or deduction that would otherwise not be recognized under another provision of the Internal Revenue Code or the regulations thereunder.

(2) *Example.* The following example illustrates the rules of this paragraph (b):

Example— (i) *Facts.* DC, a domestic corporation, owns 90 percent of P, a partnership. The remaining 10 percent of P is owned by a person unrelated to DC. P owns all of the outstanding stock of FC, a controlled foreign corporation. FC liquidates into P.

(ii) *Result.* FC's liquidation is not a transaction described in section 332. Nothing in the section 367(b) regulations, including § 1.367(b)-2(k), permits FC's liquidation to qualify as a liquidation described in section 332.

(c) *Notice Required*—(1) *In general.* A notice under this paragraph (c) (section 367(b) notice) must be filed with regard to any person described in paragraph (c)(2) of this section. A section 367(b) notice must be filed in the time and manner described in paragraph (c)(3) of